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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KINSALE INSURANCE COMPANY, an
Arkansas corporation,

Plaintiff,

vs.

TROY WHITEHEAD, LLC, a Nevada
Limited-Liability Company; CRAFTSMAN
HOMES, LLC, a Nevada Limited Liability
Company,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff KINSALE INSURANCE COMPANY ("KINSALE") hereby alleges as follows:

NATURE OF THE ACTION

1. This is an insurance coverage action whereby Plaintiff KINSALE seeks a judicial determination that it owes no duty to defend or indemnify its named insured, Defendant Troy Whitehead, LLC ("WHITEHEAD") under KINSALE insurance policy number 0100089618-1 for the policy period from June 14, 2020 through June 14, 2021 (the "POLICY") in connection with a loss that occurred on or about March 3, 2021 at 10360 Spur Street, Winnemucca, Nevada.

THE PARTIES

2. Plaintiff KINSALE is, and at all relevant times was, a corporation organized under the laws of the State of Arkansas whose principal place of business is in Richmond, Virginia.

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The word “insured” means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** –Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1)** The amount we will pay for damages is limited as described in Section **III** – Limits Of insurance; and
- (2)** Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies to “bodily injury” and “property damage” only if:

- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2)** The “bodily injury” or “property damage” occurs during the policy period; and
- (3)** Prior to the policy period, no insured listed under Paragraph **1. Of Section II – Who Is An Insured** and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

* * *

2. **Exclusions**

This insurance does not apply to:

* * *

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. . . .

* * *

j. Damage To Property

"Property damage" to:

* * *

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) that particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

* * *

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

* * *

SECTION V – DEFINITIONS

* * *

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

* * *

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

* * *

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

* * *

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

* * *

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - a. You;
 - b. Others trading under your name; or
 - c. A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

9. The POLICY contains endorsement form CAS3043 0817. The endorsement language reads, in part, as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL POLICY EXCLUSIONS

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE
LIQUOR LIABILITY COVERAGE**

The following exclusions are added to this policy:

* * *

DUTY TO DEFEND EXCLUSION

Where there is no coverage under this policy, there is no duty to defend.

* * *

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

GENERAL ALLEGATIONS

10. KINSALE is informed and believes that CRAFTSMAN retained WHITEHEAD to assemble and install a pre-fabricated, manufactured home at 10360 Spur Street (the "MANUFACTURED HOME"), Winnemucca, Nevada. KINSALE is also informed and believes that at the time the home was to be installed it remained the property of CRAFTSMAN, and was to be resold to the ultimate homeowner.

11. KINSALE is informed and believes the MANUFACTURED HOME was composed of three sections which must be assembled. On March 3, 2021, Whitehead was attempting to connect the sections, when two of them allegedly fell into the foundation and allegedly caused a total loss of the MANUFACTURED HOME (the "INCIDENT"). CRAFTSMAN asserted a claim for damages against WHITEHEAD as a result in the amount \$5,000 to demolish the MANUFACTURED HOME plus \$169,788.00 to replace the damaged

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1 MANUFACTURED HOME (the “CRAFTSMAN CLAIM”). CRAFTSMAN did not assert any
 2 claim for damages other than for “Property damage” to the MANUFACTURED HOME itself.

3 12. WHITEHEAD tendered the CRAFTSMAN CLAIM under the POLICY.
 4 KINSALE initially denied the CRAFTSMAN CLAIM in correspondence dated April 6, 2021, a
 5 true and correct copy of which is attached as **Exhibit 2** and incorporated herein by this reference.
 6 WHITEHEAD requested reconsideration of KINSALE’s denial. By letter dated July 23, 2021,
 7 KINSALE advised that it would conduct a further investigation, and that if a lawsuit was filed
 8 and served against WHITEHEAD that WHITEHEAD was to tender that lawsuit for KINSALE’s
 9 consideration. In the event that a lawsuit is filed against WHITEHEAD, KINSALE reserved the
 10 right to provide a defense under reservation of rights while pursuing this declaratory relief action
 11 and to seek recoupment of any attorney’s fees and costs that KINSALE expends in defense of
 12 WHITEHEAD. A true and correct copy of that letter is attached as **Exhibit 3** and incorporated
 13 herein by this reference.

14 **FIRST CLAIM FOR RELIEF**

15 **(Declaratory Relief – Duty to Defend)**

16 13. KINSALE incorporates paragraphs 1 through 12 as though fully set forth herein.

17 14. KINSALE contends that there presently is no duty to defend WHITEHEAD
 18 because there is no “Suit” filed against WHITEHEAD that has been tendered to KINSALE.

19 15. KINSALE also contends that based on the information provided to it thus far,
 20 there is no potential for coverage for WHITEHEAD for the “Property damage” to the
 21 MANUFACTURED HOME as asserted by CRAFTSMAN under the POLICY due to the
 22 application of the terms, conditions, exclusions and endorsements of the POLICY, including but
 23 not limited to Exclusions 2.b, 2.j(4), 2.j.(5), 2.j.(6), and 2.k.

24 16. KINSALE also contends that exclusion 2.m. Damage to Impaired Property or
 25 Property Not Physically Injured precludes coverage for “Property damage” to the third section
 26 of the MANUFACTURED HOME which did not fall into the foundation but which
 27 CRAFTSMAN nevertheless claimed was part of its total loss. Pursuant to exclusion 2.m., the
 28 POLICY does not apply to “property damage” to “impaired property” or property that has not

1 been physically injured arising out of a defect, deficiency, inadequacy or dangerous condition in
 2 “your product” or “your work”; or a delay or failure by you or anyone acting on your behalf to
 3 perform a contract or agreement in accordance with its terms.

4 17. KINSALE contends that other terms, conditions, exclusions and endorsements of
 5 the POLICY apply to preclude or limit coverage for the CRAFTSMAN CLAIM. KINSALE
 6 reserves the right to amend this Complaint as additional facts are discovered which impact the
 7 application of such terms to the controversy herein.

8 18. KINSALE is informed and believes that WHITEHEAD and CRAFTSMAN
 9 dispute KINSDALE’S contention that it has no duty to defend should a lawsuit be brought against
 10 WHITEHEAD with regard to the CRAFTSMAN CLAIM. KINSALE expressly reserves the
 11 right to amend its Complaint if and when a lawsuit is filed and served against WHITEHEAD,
 12 and to add parties other than CRAFTSMAN as are relevant to the as yet unfiled lawsuit.

13 19. In light of these inconsistent contentions, there presently exists an actual
 14 controversy between KINSALE, on the one hand, and Defendants on the other hand, with respect
 15 to KINSALE’S rights and obligations under the POLICY regarding the defense of claims against
 16 WHITEHEAD.

17 20. KINSALE therefore seeks a judicial determination that KINSALE has or will not
 18 have any obligation to defend WHITEHEAD in connection with the CRAFTSMAN CLAIM.

19 **SECOND CLAIM FOR RELIEF**

20 **(Declaratory Relief – Duty to Indemnify)**

21 21. KINSALE incorporates paragraphs 1 through 19 as though fully set forth herein.

22 22. KINSALE contends that there is no coverage for WHITEHEAD for the “Property
 23 damage” to the MANUFACTURED HOME as asserted by CRAFTSMAN under the POLICY
 24 due to the application of the terms, conditions, exclusions and endorsements of the POLICY,
 25 including but not limited to Exclusions 2.b, 2.j(4), 2.j.(5), 2.j.(6), and 2.k.

26 23. KINSALE also contends that exclusion 2.m. Damage to Impaired Property or
 27 Property Not Physically Injured precludes coverage for “Property damage” to the third section
 28 of the MANUFACTURED HOME which did not fall into the foundation but which

1 CRAFTSMAN nevertheless claimed was part of its total loss. Pursuant to exclusion 2.m., the
 2 POLICY does not apply to “property damage” to “impaired property” or property that has not
 3 been physically injured arising out of a defect, deficiency, inadequacy or dangerous condition in
 4 “your product” or “your work”; or a delay or failure by you or anyone acting on your behalf to
 5 perform a contract or agreement in accordance with its terms.

6 24. KINSALE contends that other terms, conditions, exclusions and endorsements of
 7 the POLICY apply to preclude or limit coverage for the CRAFTSMAN CLAIM. KINSALE
 8 reserves the right to amend this Complaint as additional facts are discovered which impact the
 9 application of such terms to the controversy herein.

10 25. KINSALE is informed and believes that WHITEHEAD and CRAFTSMAN
 11 dispute KINSALE’S contention that it has no duty to indemnify WHITEHEAD in this matter.

12 26. In light of these inconsistent contentions, there presently exists an actual
 13 controversy between KINSALE, on the one hand, and WHITEHEAD, on the other hand, with
 14 respect to KINSALE’S rights and obligations under the POLICY regarding the duty to indemnify
 15 WHITEHEAD for the CRAFTSMAN CLAIM.

16 27. KINSALE therefore seeks a judicial determination that KINSALE has no
 17 obligation to indemnify WHITEHEAD for the CRAFTSMAN CLAIM, and that CRAFTSMAN,
 18 as claimant, should be bound to such judgment so as to preclude CRAFTSMAN from attempting
 19 to enforce any judgment it may obtain against WHITEHEAD directly against KINSALE,
 20 whether pursuant to the terms, conditions, exclusions and endorsements of the KINSALE
 21 POLICY or applicable law.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, KINSALE prays for relief as follows:

24 A. On the First Claim for Relief, for a declaration against Defendants that KINSALE
 25 had and has no obligation to pay for any defense fees and costs on behalf of any insured under
 26 the POLICY in connection with this matter, because of the absence of any potential coverage
 27 under the terms, conditions, exclusions and endorsements of the POLICY.

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1 B. On the Second Claim for Relief, for a declaration against WHITEHEAD that
2 KINSALE had and has no obligation to pay indemnity on behalf of any insured under the
3 POLICY in connection with this matter because of the absence of any potential for coverage
4 under the terms of the POLICY.

5 C. For costs of suit.

6 D. For such further relief as the Court deems proper.

7 DATED: July 23, 2021.

LEMONS, GRUNDY & EISENBERG

8
9 /s/ Todd R. Alexander

10 By: Todd R. Alexander
11 Attorneys for Plaintiff KINSALE
INSURANCE COMPANY

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff KINSDALE INSURANCE COMPANY herein demands a trial by jury.

14 DATED: July 23, 2021.

LEMONS, GRUNDY & EISENBERG

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16 /s/ Todd R. Alexander

17 By: Todd R. Alexander
18 Attorneys for Plaintiff KINSALE
19 INSURANCE COMPANY
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